

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII**

PUBLIC UTILITIES
COMMISSION

JAN 16 4 06 PM '04

FILED

**In The Matter Of the Application Of
HAWAIIAN ELECTRIC COMPANY, INC.**

DOCKET NO. 03-0417

**for approval to commit funds in excess of
\$500,000 for Item Y48500, East Oahu
Transmission Project.**

**MEMORANDUM IN RESPONSE TO
PALOLO COMMUNITY COUNCIL'S MOTION TO INTERVENE**

AND

CERTIFICATE OF SERVICE

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**MEMORANDUM IN RESPONSE TO
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This Memorandum is respectfully submitted by HAWAIIAN ELECTRIC COMPANY, INC. ("HECO") in response to the Motion to Intervene filed January 7, 2004 by Palolo Community Council ("Palolo CC") ("Palolo CC's Motion").

HECO does not oppose Palolo CC's intervention in this docket, provided that Palolo CC is not permitted to expand the scope of the proceeding or delay the proceeding, and Palolo CC is required to comply with the Rules of Practice and Procedure Before the Public Utilities Commission (Hawaii Administrative Rules, Title 6, Chapter 61) ("Commission's Rules of Practice and Procedure").

DISCUSSION

A. Introduction

Palolo CC cites Docket No. 7256 (in which the Commission granted late-filed motions to intervene, and ultimately approved HECO's Waiau-CIP 138kV #1 & #2, Part 2, Transmission Lines project¹) as precedent.² The Waiau-CIP case does not stand for the proposition that

¹ Re Hawaiian Electric Co., Docket No. 7256, Decision and Order No. 13201 (April 7, 1994).

movants in Palolo CC's position are somehow entitled to the status of a party, and Palolo CC has not cited any statute for that proposition. Compare Hawaii Revised Statutes §269-51 (granting the Consumer Advocate the right to participate in Commission proceedings). Thus, Palolo CC's Motion is governed by the Commission's Rules of Practice and Procedure regarding intervention.

The general rule with respect to intervention, as stated by the Hawaii Supreme Court, is that intervention as a party to a proceeding before the Commission "is not a matter of right but is a matter resting within the sound discretion of the Commission." In re Hawaiian Electric Co., 56 Haw. 260, 262, 535 P.2d 1102 (1975); see Re Maui Electric Co., Docket No. 7000, Decision and Order No. 11668 (June 5, 1992) at 8; Re Hawaii Electric Light Co., Docket No. 6432, Order No. 10399 (November 24, 1989) at 5-6.

The Commission exercises its discretion by determining whether or not a movant should be admitted as a party (or as a participant) in a proceeding. Hawaii Administrative Rules ("H.A.R.") §6-61-55 (d) specifically states that: "Intervention shall not be granted except on allegations which are reasonably pertinent to and do not unreasonably broaden the issues already presented." Re Hawaii Electric Light Co., Docket No. 7259, Order No. 12893 (December 2, 1993). In addition, the Commission needs to insure "the just, speedy and inexpensive determination of every proceeding," which is the purpose of the Commission's rules as stated in H.A.R. §6-61-1.

B. HECO's Position

Based on the information in its Motion, and the information on file with the Department of Commerce and Consumer Affairs, Palolo CC is a domestic nonprofit corporation incorporated

² Palolo CC's Motion, 1st through 2nd pages. Palolo CC's Motion does not contain page numbers. For ease of reference, HECO will refer to the first page following the cover sheet of Palolo CC's Motion as the "1st page"

in Hawaii. The Motion is signed by its President, Karen Iwamoto, who will represent the organization.

HECO does not oppose Palolo CC's intervention in this docket, provided that Palolo CC is not permitted to expand the scope of the proceeding or delay the proceeding, and Palolo CC is required to comply with the Commission's Rules of Practice and Procedure (e.g., rules regarding format for pleadings and other documents, and hearing and post-hearing procedures).

HECO's position takes into account Palolo CC's representations that it will not seek to expand the scope of the proceeding or delay the proceeding - - Palolo CC claimed that its "participation will not obstruct or unreasonably delay, or attempt to obstruct or unreasonably delay, discovery proceedings or other proceedings, that is or would be prejudicial to the interests of any opposing parties." Palolo CC's Motion, 2nd page.

In general, this is not the point in the proceeding for HECO to respond to any contentions by Palolo CC, but a brief comment on one point is warranted. Palolo CC's principal concern stated in its motion is that some of HECO's "proposed alternatives would go underground through Palolo or overhead in viewplanes seen from Palolo." HECO notes that its proposed project involves the installation of new underground 46 kV lines, none of which would be installed in Palolo, and that the alternatives presented to the public for community input involved only underground lines. HECO's non-response to other contentions in the motion should not be misconstrued as agreement with or acceptance of the accuracy of such contentions.

Palolo CC has requested a hearing on its Motion. Palolo CC's Motion, 1st page. In the event the Commission grants Palolo CC's Motion, however, it is not necessary to hold a hearing on Palolo CC's Motion; provided that the existing parties to the docket (i.e., HECO and the

and continue such corresponding page references numerically until the third page (which contains the signature

Consumer Advocate) do not oppose Palolo CC being permitted to intervene in this docket. (As stated above, HECO does not oppose Palolo CC being permitted to intervene in this docket.)

DATED: Honolulu, Hawaii, January 16, 2004.

A handwritten signature in black ink, appearing to read 'T. Williams, Jr.', written over a horizontal line.

THOMAS W. WILLIAMS, JR.
PETER Y. KIKUTA

Attorneys for
HAWAIIAN ELECTRIC COMPANY, INC.

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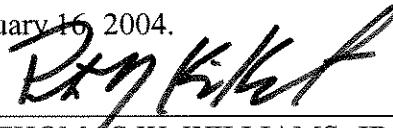
CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing **MEMORANDUM IN
RESPONSE TO PALOLO COMMUNITY COUNCIL'S MOTION TO INTERVENE**,
together with this Certificate of Service, by making personal delivery or by causing a copy hereof
to be mailed, postage prepaid and properly addressed, to each such party:

Division of Consumer Advocacy (2)
Department of Commerce and Consumer Affairs
335 Merchant Street, Room 326
Honolulu, Hawaii 96813

Karen H. Iwamoto
President
Palolo Community Council
3443 Hardesty Street
Honolulu, Hawaii 96816

DATED: Honolulu, Hawaii January 16, 2004.



THOMAS W. WILLIAMS, JR.
PETER Y. KIKUTA

Attorneys for
HAWAIIAN ELECTRIC COMPANY, INC.